KNM EXOTIC EQUIPMENT SDN BHD v. MOHD YUNUS ABDUL RAHMAN & ORS

HIGH COURT MALAYA, MELAKA
ANSELM CHARLES FERNANDIS J
[CIVIL APPEAL NO: MA-16-5-04-2024]
25 SEPTEMBER 2025

Abstract – *An employee's signature on a termination or retrenchment agreement does not constitute 'voluntary' acceptance if the circumstances demonstrate undue pressure or a lack of informed consent. Consent is vitiated where: (i) the agreement is presented on a 'take-it-or-leave-it' basis without alternatives or room for dialogue; (ii) the timeline for consideration is unreasonably short; (iii) the calculations for compensation are not explained; and (iv) there exists language barriers without adequate translation or explanation.*

LABOUR LAW: *Employment – Termination – Retrenchment – Redundancy – Employer experiencing financial problems and executed redundancy exercise – Whether terminated employees voluntarily accepted termination notice and retrenchment compensation – Factors determining voluntariness – Employment Act 1955, s. 7*

The appellant was part of the KNM Group of Companies, which was experiencing a serious financial problem. As the business was bad, the appellant had to cease business and had to execute a redundancy exercise. The representatives of the appellant allegedly held an online meeting to explain to the respondents the dire financial situation that the appellant was in. The respondents, who were employees of the appellant, later received a termination letter from the appellant, which: (i) had a form that they had to fill to indicate whether they agreed to the termination notice and retrenchment compensations; (ii) contained the date which the respondents' employment would be officially terminated, *ie*, 30 November 2023; and (iii) offered the respondents monies in respect of termination notice and retrenchment compensation. According to the appellant, the respondents accepted the offer and signed the forms voluntarily. The respondents, dissatisfied with the amounts offered to them, lodged a complaint with the Labour Office, contending that the appellant did not award them proper termination benefits and had acted contrary to the Employment Act 1955 ('Act'). The Labour Office, through its order, required the appellant to pay the respondents a total of RM110,027.07 being termination and lay off benefits. Hence, the present appeal. In support of its appeal, the appellant submitted that the respondents had voluntarily accepted the termination notice and retrenchment compensation monies.

Held (dismissing appeal):

(1) The respondents were not fully apprised and did not fully understand the contents of the letter when they signed the acceptance form, based on the following reasons: (i) the letter was prepared in advance by the appellant and the amounts in the letter were inserted in the letter without any explanation as to how they were derived at; (ii) there was no alternative stated in the letter in the event the respondents did not agree with the amount stated in the termination notice and retrenchment compensation; (iii) there was no evidence of an online meeting. No recording was adduced; (iv) the respondents were pressured and rushed into agreeing to the offer. They were given the letters on 29 November 2023 and were expected to reply the following day; (v) the letter was in English while all the respondents were Malays; and (vi) the letter was required to be signed on the last day of the respondents' employment, leaving no room for dialogue. Therefore, it could not be said that they had 'voluntarily' entered into the termination agreement. (paras 41 & 43)

(2) Pursuant to s. 7 of the Act, where an agreement, which provides a term or condition of service which is less favourable to an employee than a term or condition of service prescribed by the Act or any Regulations, the said term shall be void and of no effect to that extent and the more favourable provisions in the Act or Regulations shall be substituted thereof. The sums awarded for the termination notice and retrenchment compensation, as stated in the letter, were less favourable than the termination benefits specified in reg. 6 of the Employment (Termination and Lay-Off Benefits) Regulations 1980. (paras 48 & 50)

(3) The relevant provision in respect of employees being laid-off can be found in reg. 5 of the Regulations entitled 'Lay-off'. The Labour Officer did not deliberate on reg. 5 nor did she award any award for 'lay-off'. Although the order did state 'faedah-faedah penamatan dan pemberhentian kerja', the mention of 'pemberhentian kerja' was only incidental to it. The appellant was not, in any way, prejudiced by this. The formula for the calculation for benefits on termination and lay-off was the same. (paras 61, 63 & 64)

Case(s) referred to:

Colgate Palmolive Sdn Bhd v. Cheong Foo Weng [2001] CLJU 394; [2001] 1 LNS 394 HC ***(refd)***

Golden Hope Plantations (Peninsular) Sdn Bhd (Ladang Sungei Senarut) v. Saraswathy Kathan [2009] 3 CLJ 335 CA ***(refd)***

Hotel Jaya Puri Bhd v. National Union of Hotel, Bar & Restaurant Workers & Anor [1979] CLJU 32; [1979] 1 LNS 32 HC ***(dist)***

M/s Viking Askim Sdn Bhd v. National Union Of Employees In Companies Manufacturing Rubber Products & Anor [1991] 1 CLJ 552; [1991] 3 CLJ (Rep) 195 HC ***(refd)***

Malaysia Baggage Transport Agency Sdn Bhd v. National Union Of Commercial Workers [1984] 1 ILR 13 IC ***(dist)***
PJD Regency Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah & Anor And Other Appeals [2021] 2 CLJ 441 FC ***(refd)***
Suhaila Talib v. Pearl Discovery Development Sdn Bhd [2024] ILRU 1188 IC ***(refd)***
Syed Ibrahim Syed Mohd & Ors v. Esso Production Malaysia Incorporated [2004] 1 CLJ 889 CA ***(refd)***
Zainon Ahmad & Ors v. Padiberas Nasional Bhd [2012] 8 CLJ 29 FC ***(dist)***

Legislation referred to:
Employment Act 1955, ss. 7, 7A, 69(1), 77, First Schedule
Employment (Termination and Lay-Off Benefits) Regulations 1980, regs. 3, 4, 5, 6
Rules of Court 2012, O. 55 rr. 2, 3(1), 4(1)(c)

For the appellant - Allen Miranda Emmanuel; M/s Suraiya Arif, Miranda & Tan
For the respondents - Mathan Anandaram; M/s Mathan Anandaram & Co

Reported by Najib Tamby

JUDGMENT

Anselm Charles Fernandis J:

Introduction

[1] KNM Exotic Equipment Sdn Bhd had appealed to this court against the order dated 5 March 2024 of the Ketua Pengarah Tenaga Kerja (KPTK) through the Labour Officer. The order required KNM to pay the complainants a total of RM110,027.07 for "Faedah Penamatan dan Pemberhentian Kerja", *ie*, termination and lay-off benefits. The claimants were the employees of KNM Exotic.

[2] The appeal was brought before this court under s. 77 of the Employment Act 1955 (EA 1955) and O. 55 r. 3(1) of the Rules of Court 2012 (ROC 2012).

[3] On 24 January 2025, this court dismissed the appeal. I now give my reasons in deciding as such.

[4] In this judgment, KNM Exotic will be known as "the appellant" and the complainants as "the respondents".

Brief Background

[5] The appellant is part of the KNM Group of Companies and is listed in the Bursa Malaysia. The KNM Group was experiencing a serious financial problem, as it was issued with a Practice Note 17 (PN17) by Bursa Malaysia, and it was part of the appellant's case that it was in debt in the sum of RM1.2 billion. It had about 400 creditors it owed money to. Court proceedings had also been taken against the appellant.

[6] It was contended by the appellant that its business was bad that it had to cease business. It claims that it had to execute redundancy exercise or "tawaran pemberhentian kerja".

[7] The representatives of the appellant including the CEO held a townhall meeting with the respondents on 27 November 2023 using "Microsoft Teams", *ie*, online. In that meeting, the appellant had explained to the respondents the dire financial situation the appellant was in.

[8] On 29 November 2023, each of the respondents received a termination letter (the letter) from the appellant's representative, Sivaraj a/l Manikam (Sivaraj), explaining that their services would be terminated and the amount of money each was to receive.

[9] Together with the letter was the form which all the respondents had to fill to indicate whether they agreed to the "termination notice" and "retrenchment compensation" offered in the letter.

[10] The letter also contained the date which the respondent/employee's employment would be "officially terminated", which was on 30 November 2023 for all the respondents. The letter offered the respondents, *inter alia*, monies in respect of "termination notice" and "retrenchment compensation". The amount each respondent was to receive was already stated in the letter itself. The form was in the following format common to all the respondents:

> I ... hereby accept the termination and agree to the final payment offered by the Company and my last day with the company will be ...

[11] They all accepted the offer by signing the form. According to Sivaraj a/l Manickam, the Human Resource Capital Management and the Internal Auditor of the appellant, the respondents signed the forms voluntarily.

[12] Sivaraj was the only witness for the appellant.

[13] During cross-examination by the respondent at p. 56 encl. 5, Sivaraj told the court that the reason the appellant did not follow the guidelines of Jabatan Tenaga Kerja (JTK) guidelines was because the calculations were based on what the appellant could afford to pay ("apa syarikat mampu bayar"). See PDF p. 60 encl. 5. All the decisions were made by the Board of Directors of the appellant.

[14] When questioned by the court, Sivaraj said that several respondents referred the letter to the appellant as they did not understand English and he translated the letter for them. He further informed the KPTK that one Fatin Nurain binti Zakaria representing the respondents stated that the respondents were willing to be paid by instalment, but the appellant disagreed as the appellant could not afford to pay by instalments.

[15] The respondents were dissatisfied with the amounts that was offered to them. They made a complaint to the JTK contending that the appellant did not award them proper termination benefits. Further, the appellant had acted contrary to the EA 1955.

[16] The respondents filed their complaint claiming for the following amounts from the appellant:

Bil	Jenis Tuntutan	Jumlah Tuntutan
1.	Faedah-Faedah Penamatan dan Pemberhentian Kerja: Faedah Penamatan 19 tahun (Baizurah Binti Abu Bakar)	RM24.690.61
2.	Faedah-Faedah Penamatan dan Pemberhentian Kerja: Faedah Penamatan 14 tahun (Mohamed Faizal Mohamed Diah)	RM16,181.50
3.	Faedah-Faedah Penamatan dan Pemberhentian Kerja: Faedah Penamatan 23 tahun (Mohamed Razif Bin Yasak)	RM40,131.00
4.	Faedah-Faedah Penamatan dan Pemberhentian Kerja: Faedah Penamatan 15 tahun (Mohd Yunus Bin Abdul Rahman)	RM29,02.96

[17] On the hearing at the Labour Court, the respondents represented themselves while the appellant was represented by counsel.

Findings Of The Labour Court

[18] On the issue of jurisdiction, the learned Labour Officer found that the respondents were "employees" as defined under the First Schedule of the EA 1955. Their claims could therefore be heard under s. 69(1) of the EA 1955.

[19] The Labour Officer referred to reg. 3 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 (the Regulations) and found the said regulation applicable to the facts of this case. The relevant part of reg. 3 reads:

> General provisions for the entitlement of employees to termination or lay-off benefits payment.
>
> (1) Subject to these Regulations, an employer shall be liable to pay termination or lay-off benefits payment calculated in accordance with regulation 6 to an employee who has been employed under a continuous contract of service for a period of not less than twelve months ending with the relevant date if:

(a) **the contract of service of the employee is terminated; or**

(b) the employee is laid-off within the meaning of regulation 5.
(emphasis added)

[20] The Labour Officer also referred to and relied upon reg. 4 in respect of the entitlement or right of the employee to receive termination benefits. The relevant part of reg. 4 reads as follows:

Termination

(1) Subject to paragraphs (2), (3) and (4), **an employee shall be entitled to termination benefits payment where his contract** of service is terminated for any reason whatsoever otherwise than –

(a) by the employer, upon the employee attaining the age of retirement if the contract of service contains a stipulation in that behalf; or

(b) by the employer, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry; or

(c) voluntarily by the employee, other than under section 13 (2) or for the reasons specified in section 14(3) of the Act.
(emphasis added)

[21] On the plain reading of reg. 4, the mandatory words "shall be entitled to termination benefits" means that unless an employer can bring the termination within one of these three exceptions, an employer would have to pay termination benefits to the employee regardless of the financial situation of the employer.

[22] It is obvious to this court that the Labour Officer was of the view that none of the exceptions to reg. 4 were applicable to the present case.

[23] In this regard, suffice to say at this juncture that the appellant relied on para. 1(c) of reg. 4 as an exception to the respondents receiving termination benefits as they had "voluntarily" relinquished their entitlement to those benefits by signing the letter.

[24] Next, the Labour Officer was of the view that the amount of money to be paid to each of the respondents was void in the light of s. 7 of the EA 1955. This section states:

More favourable conditions of service under the Act to prevail

Subject to section 7A, any term or condition of a contract of service or of an agreement, whether such contract or agreement was entered into before or after the coming into force of this Act, which provides a term or condition of service which is less favourable to an employee than a term or condition of service prescribed by this Act or any regulations, order or other subsidiary legislation whatsoever made thereunder shall be

void and of no effect to that extent and the more favourable provisions of this Act or any regulations, order or other subsidiary legislation whatsoever made thereunder shall be substituted therefor.

[25] The Labour Officer was of the view that the so-called "agreement" was part of the contract of service in respect of termination benefits.

[26] Based on the formulation in reg. 6 of the Regulations, the Labour Officer concluded that each of the respondents were entitled to a more favourable amount than stated in the letter after the deduction of the amount already received in the letter. This is reflected in her judgment where she stated:

[15] Jika dilihat dari sudut perbandingan nilai atau jumlah bayaran oleh Pihak defendan dan Akta 265 terdapat perselisihan jumlah yang ketara seperti berikut:

a. Mohd Yunus bin Abdul Rahman (15 tahun perkhidmatan)
Bayaran retrenchment compensation oleh Pihak Defendan : RM4,826.25

Pengiraan faedah penamatan oleh Akta : RM33,850.11
Perbezaan : RM29,023.86

b. Mohd Razif bin Yasak (23 tahun perkhidmatan)

Bayaran retrenchment compensation oleh Pihak Defendan : RM6,116.00

Pengiraan faedah penamatan oleh Akta : RM46,247.01
Perbezaan : RM40,131,00

c. Mohd Faizal bin Mohamed Diah (14 tahun perkhidmatan)

Bayaran retrenchment compensation oleh Pihak Defendan : RM3,150.00

Pengiraan faedah penamatan oleh Akta : RM19,331.50
Perbezaan : RM16,181.50

d. Baizurah binti Abu Bakar (19 tahun perkhidmatan)

Bayaran retrenchment compensation oleh Pihak Defendan : RM3,369.00

Pengiraan faedah penamatan oleh Akta : RM28,059.61
Perbezaan : RM14,690.61

[27] It was not in dispute that all the respondents had worked for more than five years for the appellant. For ease of reference reg. 6 is reproduced here:

> 6. Amount of termination or lay-off benefits payment
>
> (1) Subject to the provisions of these Regulations, the amount of termination or lay-off benefits payment to which an employee is entitled in any case shall not be less than -
>
> (a) ten days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for a period of less than two years; or
>
> (b) fifteen days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for two years or more but less than five years; or
>
> (c) *twenty days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for five years or more, and pro-rata as respect an incomplete year, calculated to the nearest month.* (emphasis added)

The Appellant's Contention

[28] Learned counsel for the appellant had emphasised on the serious financial problems the appellant was facing. This situation was made known to the respondents.

[29] The respondents were presented with the letter on the 29 November 2023. They were given until the following day (30 November 2023) to decide on the offer made to them in the form of "termination notice" and "retrenchment compensation". Regrettably, counsel submitted, after accepting the amounts offered, the respondents made a complete turn around and complained the amounts offered were not in accordance with the EA 1955 and that they were entitled to more. This, according to counsel for the appellant was unfair to the appellant.

[30] It was asserted by the appellant that the respondents could not ask for more monies. This was because they had accepted the offer voluntarily. As stated earlier the appellant relied on the exception in reg. 4(1)(c) of the Regulations.

[31] Further, the respondents were not entitled to "lay-off" benefits as they were not daily paid workers. Learned counsel for the appellant submitted length on reg. 5 of the Regulations. The appellant also relied on the case of *M/s Viking Askim Sdn Bhd v. National Union Of Employees In Companies Manufacturing Rubber Products & Anor* [1991] 1 CLJ 552; [1991] 3 CLJ (Rep) 195; [1991] 2 MLJ 115.

[32] Counsel for the appellant asserted that the respondents had agreed to accept the termination notice, the amount constituted a "full and final settlement", and the respondents could not now claim for the termination benefits.

[33] Lastly, it was argued that the second and fourth respondents were not entitled to the "lay-off" benefits as they were not manual labourers. The second and fourth respondents had failed to prove that they had performed manual labour in any one wage period exceeds one-half of the total time during which they are required to work in that period. Reference was made to the First Schedule of the EA 1955 at para. 2(1). The appellant referred to the case of *Colgate Palmolive Sdn Bhd v. Cheong Foo Weng* [2001] CLJU 394; [2001] 1 LNS 394 to support this assertion.

Findings Of This Court

[34] At the outset, it is important to state that this court regards this appeal as a rehearing of what was placed as evidence before the Labour Court. This court may therefore look at and re-assess the evidence presented before the Labour Court for the sake of justice in the case.

[35] Equally important is that the determination in the instant appeal calls for a consideration and interpretation of the EA 1955. This Act come within the category of "social legislation". *Golden Hope Plantations (Peninsular) Sdn Bhd (Ladang Sungei Senarut) v. Saraswathy Kathan* [2009] 3 CLJ 335; [2009] 1 MLJ 611.

[36] To emphasis this point, it is worthwhile reproducing *in extensio* the Federal Court case of *PJD Regency Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah & Anor And Other Appeals* [2021] 2 CLJ 441; [2021] 2 MLJ 60 where the court made the following observations:

> [1] The phrase "social legislation" attached to the Housing Development (Control and Licensing) Act 1966 ("HDA 1966") and its ensuing subsidiary legislation, *ie*, the Housing Development (Control and Licensing) Regulations 1989 ("HDR 1989") is not merely a fanciful label, in disputes between home buyers and housing developers, its significance lies in the approach taken by the courts to tip the scales of justice in favour of the home buyers given the disparity in bargaining power between them and the housing developers.
>
> [31] ... A social legislation is a legal term for a specific set of laws passed by the Legislature for the purpose of regulating the *relationship between a weaker class of persons and a stronger class of persons. Given that one side always has the upper hand against the other due to the inequality of bargaining power, the State is compelled to intervene to balance the scales of justice by providing certain statutory safeguards for that weaker class. ...*

A [33] ... When it comes to interpreting social legislations, the State having statutorily intervened, *the courts must give effect to the intention of Parliament and not the intention of parties.* Otherwise, the attempt by the Legislature to level the playing field by mitigating the inequality of bargaining power would be rendered nugatory and illusory.

B [36] From the above, we would summarise the principles on the interpretation of social legislation as follows:

(i) Statutory interpretation usually begins with the literal rule.

However, and without being too prescriptive, where the provision under construction is ambiguous, the courts will C determine the meaning of the provision by resorting to other methods of construction foremost of which is the purposive rule (see the judgment of this court in *All Malayan Estates Staff Union v. Rajasegaran & Ors* [2006] 4 CLJ 195; [2006] 6 MLJ 97).

(ii) The literal rule is automatically displaced by the purposive rule D when it concerns the interpretation of the protective language of social legislation.

(iii) For the avoidance of doubt, it is important to emphasise *that even where a term or provision of a social legislation or a statutory contract enacted thereunder is literally clear or unambiguous, the court no less shoulders the obligation to ensure that the said term or provision is* E *interpreted in a way which ensures maximum protection of the class in whose favour the social legislation was enacted.* (emphasis added)

[37] It is clear to me that although *PJD Regency* (*supra*) was concerned with the Housing Development (Control and Licensing) Act 1966, the same principles would also apply to the EA 1955. It is also apparent that in the F present case, the "class in whose favour the social legislation was enacted" or what had been referred to as "a weaker class of persons" in the context of this present case are the respondents, while "stronger class of persons" refer to the appellant.

G **[38]** Guided by the principles pronounced in *PJD Regency* (*supra*), O. 55 r. 2 of the ROC 2012, and the evidence adduced during the hearing, I now come to address the issues raised in this case.

[39] The appellant asserts that the respondents had "voluntarily" accepted the "termination notice" and "retrenchment compensation" monies. It was H argued that the respondents' contract of service was terminated voluntarily by the respondents as envisaged in reg. 4(1)(c) of the Regulations.

[40] The respondents, however, evinced a different version of things:

(i) Mohd Yunus bin Abdul Rahman, a welder. He disagreed with counsel I that he had accepted the termination of his employment as stated in the letter. He also denied that he had agreed to the amount as stated in the letter:

S Pada mukasurat 43 yang ditandatangan, terdapat klausa 'I, hereby accept the termination and agree to the final payment offered by the Company and my last day with the company will be ...

Mengikut apa yang tertera di sini, Pengadu terima penamatan pekerjaan seperti butiran di surat, setuju?

J Tidak setuju.

S Kemudian, ayat di sini juga Pengadu telah bersetuju dengan pembayaran terakhir yang ditawarkan oleh Syarikat, setuju

Tidak.

(ii) Baizurah binti Abu Bakar, a clerk. She disagreed with counsel that she had accepted the termination of her employment as stated in the letter. She also disagreed that she had agreed to the amount as stated in the letter:

S Berdasarkan klausa 'I, ... hereby accept the termination and agree to the final payment offered by the Company and my last day with the company will be ...' seperti yang dinyatakan?

J Tidak.

S Pada klausa yang sama, puan telah bersetuju kepada pembayaran terakhir yang ditawarkan oleh syarikat?

J Tidak.

(iii) Mohd Razif bin Yasak, an Inventory Controller, although he agreed he had signed the letter, he and his colleagues were not sure as to the compensation which he and his colleagues are to receive. Only after the clarification from the JTK, an assessment was made as to the actual amount they ought to receive, and the amount stated in the letter:

S Selepas berkhidmat dengan syarikat selama 23 tahun kemudian berlaku penamatan, apa yang berlaku selepas situasi tersebut yang membawa Encik ke Mahkamah pada hari ini?

J Saya dan rakan tiada pengetahuan tentang kelayakan bayaran pampasan jadi kami bertanya dengan Jabatan dan diterangkan peruntukan undang-undang yang mana bayaran pampasan mengikut tahun perkhidmatan. Pengiraan dibuat dan jumlah bayaran yang dibuat jauh berbeza dengan undang-undang buruh. Saya dan rakan menuntut hak kami mengikut undang-undang itu sebabnya kami datang Pejabat untuk khidmat nasihat dan failkan kes buruh.

S Bagaimana dengan Pihak Majikan sebelum memfailkan tuntutan ini?

J Apabila ditanya memberi jawapan masalah kewangan.

(iv) Mohd Faisal bin Mohammad Diah, an electrician, although he had received the termination letter, he said he did not accept the offer:

S Dan bersetuju menerima tawaran bayaran akhir oleh Syarikat, setuju?

J Tidak setuju.

[41] From the evidence of the respondents, I am satisfied that they were not fully apprised and did not fully understand the contents of the letter when they signed the acceptance form. I say so because of the following reasons:

(i) the letter was prepared in advance by the appellant. The amounts in the letter were inserted without explanation on how they were derived at;

(ii) there was no alternative stated in the letter in the event that the respondents did not agree with the amount stated in the "termination notice" and "retrenchment compensation";

(iii) there is no evidence as to what was said "online" on 27 November 2023 by the CEO, *ie*, Ravindrasingam Balasingham of the appellant to the respondents. There was no recording of this online meeting adduced;

(iv) the respondents were given these letters on the 29th and were expected to reply on the following day, *ie*, 30 November 2023. In other words, the respondents were pressurised and rushed into agreeing to the offer of which there was no other alternative provided;

(v) the letter was in English while all the respondents were Malays. It was clear from the evidence of Sivaraj himself that the respondents had to come to him to explain what was stated in the letter. What Sivaraj, an interested party, explained was not elaborated or detailed in evidence. It is also noted that there were more than 40 workers who attended that time; and

(vi) the letter was required to be signed on the last day of the respondents' employment leaving no room for dialogue.

[42] The ordinary dictionary meaning of "voluntarily" is "performed, undertaken, or brought about by free choice, willingly, or without being asked". See *Collins On-line Dictionary*. This would encompass actions such as doing something without being forced or pressured. Further, one cannot be said to have "voluntarily" agree to something if it was not fully understood by him.

[43] From the evidence adduced at the Labour Court, I find that the respondents had successfully shown that they were not agreeable to the amounts stated in the letters. They were not given any choices in the matter and were rushed. There was no time for deliberation as well as no or lack of explanation as to the nature and consequences of signing the letter. In such

a scenario, it cannot be said that they had "voluntarily" entered into the termination agreement.

[44] Consequently, I find that the exception in reg. 4(1)(c) of the Regulations does not apply and is not helpful to the appellant. The corollary of this is that the respondents would be entitled to termination benefits under the said regulations.

[45] Upon this finding, it cannot be that the respondents had agreed to the termination voluntarily and it amounted to a "full and final payment". The signed "acceptance form" cannot therefore be used to bind the appellant to the amount stated therein.

[46] I also find that that the authority cited by learned counsel for the appellant, *Zainon Ahmad & Ors v. Padiberas Nasional Bhd* [2012] 8 CLJ 29, is distinguishable. There, the employee had a choice either to accept of voluntary separation scheme (VSS) or continue to work as before. There was no such choice offered to the respondents here. It was a "take it or leave it" situation for the respondents. Further the employee in *Zainon Ahmad* (*supra*) wilfully accepted the VSS. It was only after two years that the employee came to ask for more based on a "buku panduan" which the Federal Court held had been overridden by the terms of the VSS.

[47] In any event and apart from this court's finding that the respondents had not agreed "voluntarily" to the amounts in the letter, I am also of the view that the amounts stated in the letter by the respondents is void in the light of s. 7 of the EA 1955.

[48] Section 7 of the EA 1955 in effect states that where an agreement which provides a term or condition of service which is less favourable to an employee than a term or condition of service prescribed by this Act or any regulations, the said term shall be void and of no effect to that extent and the more favourable provisions of this Act or any regulations, shall be substituted thereof.

[49] The EA 1955 sets the minimum employment standard as such the provisions of the EA 1955 should be construed strictly in favour of the workers and not in favour of the employers. This is the protection provided for by ss. 7 and 7A of the EA 1955. See *Syed Ibrahim Syed Mohd & Ors v. Esso Production Malaysia Incorporated* [2004] 1 CLJ 889.

[50] Accordingly, I agree with learned Labour Officer that the sums awarded for the "termination notice" and "retrenchment compensation" as stated in the letter were less favourable than the termination benefits specified in reg. 6 of the Regulations.

[51] The events leading to the issuance of the letter will throw light into the reason on why the appellant coming to the amount which was unacceptable to the respondents. At the outset, it cannot be denied that the

KNM Group of Companies in which the appellant was part of was in dire financial straits. From the evidence of Sivaraj, the main concern was to prevent further losses.

[52] According to Sivaraj, three options were considered by the Board of Directors. The third option was chosen by the Board of Directors. Of the three options, the third option would cost the appellant the least in terms of pay-out. What is obvious was that the amount to be paid to the respondents were determined by the financial situation of the appellant and not the dictates of the EA 1955. The excerpt from the minutes shows the deliberation process of the Board of Directors meeting of the appellant on 2 November 2023 before arriving at the final figures. These extracts can be found at p. 213 of the 'Rekod Rayuan' in encl. 5 and is reproduced here:

(i) The total salary cost for MFS for month of September 2023 was RM318,433 for salary, allowances and statutory payments.

(ii) Based on the month September 2023 payroll simulation on individual basis the severance payout for Option 1 was estimated at RM3.298 million with average payout per staff of RM51,528 for 64 staff **if follow the Employment Act.** High payout is mainly due to 95% or 61 staffs are more than 5 years of service.

(iii) However, for discretionary Option 2 would cost the Company RM713,483 with average pay out RM11,148 per staff based on standard 3 months salary for all staffs without considering the years of service. Equivalent to 1 month notice period and 2 months flat severance cost.

(iv) For the discretionary Option 3, it would cost the Company RM595,197 with average pay out RM9,300 per staff based on 3 tier payment scheme for years of service. The severance cost for 1st tier (>20 years service) will be 2 months, 2nd tier (between 10 to 20 years service) will be 1.5 months and 3rd tier (< 10 years service) will be 0.75 months. In addition, each tier staffs are entitled to 1 month notice period payment.

(v) All selected staffs will be requested to utilize all outstanding leaves prior to last day.

(vi) All outstanding salary, allowances and claims should be settled for retrenched staffs prior to their last day.

Recommended Proposal

(vii) In view of the current situation, Management propose Option 3 with total payout of RM595,197 for 64 staffs to be implemented for immediate solution to the Group financial constraint and manpower rationalization **despite the consequences for non-compliant to the Employment Act.** (emphasis added)

[53] The last paragraph of the excerpt evidently shows that the Board of Directors of the appellant endorsed the third option despite the fact that the Board was fully conscious that Option 3 would be against the EA 1955 and against the law. It is also an admission by the appellant that the "termination notice" and "retrenchment compensation" was contrary to the EA 1955, but was willing to accept the consequences of their actions. As Option 3 is "non-compliant" to the EA 1955, the amount derived as compensation in the letter should therefore be void and of no effect to that extent and replaced with the more favourable reg. 6 formula.

[54] In his evidence Sivaraj confirmed that Option 3 was used:

> S Saya merujuk kepada mukasurat 35, ada dinyatakan peruntukan menurut Akta Kerja 1955 iaitu kadar kelayakan 10, 15 atau 20 hari?
>
> J Kami buat pengiraan perbandingan untuk dinilai dan membantu dalam membuat keputusan berdasarkan kedudukan semasa kewangan syarikat.
>
> S Saya merujuk kepada bayaran compensation seperti dalam dokumen, bagaimana jumlah contohnya RM6,116.00 untuk Pengadu Mohd Razif?
>
> J Mengikut Option 3 di mukasurat 36 klausa 7.7 Recommended Proposal.

[55] The Board of Directors were aware of the risk involved in not complying with the EA 1955. The risk was made known to them at para. 7.9 of the minutes at p. 214 of encl. 5:

> Retrenchment Risk
>
> Construe as unfair dismissal if the Employment Act are not met, the decision was capricious, *mala fide*, or the employee is a victim of unfair labour practice.

[56] It was also submitted by the appellant that the respondents were not entitled to any termination benefits as the appellant had closed down and ceased business. *Malaysia Baggage Transport Agency Sdn Bhd v. National Union Of Commercial Workers* [1984] 1 ILR 13 (Award No. 211 of 1983) was cited for this proposition. *Malaysia Baggage* (*supra*) is distinguishable in that it concerned entirely on the interpretation of arts. 17 and 18 of a collective agreement between the company receivers. In fact, the receivers contended that as there is a total closure of the business, the employees are not entitled to any payments under arts. 17 & 18, but only under the Employment (Termination and Lay-Off Benefits) Regulations 1980. Further, Harun J (as he then was) held in that case that, "... the non-payment of monies to workers under subsequent legislations, *viz*. the Industrial Relations Act 1967 and the Employment (Termination and Lay-Off Benefits) Regulations 1980 are made offences". This implies that one could still seek termination benefits under the EA 1955 and its Regulations where applicable.

[57] The other case relied upon by counsel for the appellant was *Hotel Jaya Puri Bhd v. National Union Of Hotel, Bar & Restaurant Workers & Anor* [1979] CLJU 32. Again, the facts of that case can be distinguished from the present one. Retrenchment benefits were not awarded in *Hotel Jaya Puri* because all the employees were less than three years in service. This is not the case in the present case where all the respondents were in service for more than five years with the appellant. In *Hotel Jaya Puri*, Salleh Abas FJ (as he then was) elucidated:

> ... in its application to this case, none of the workers involved would be entitled to retrenchment benefits because none of them had a three year minimum service so as to qualify for retrenchment benefits provided for under that article. The provision of this article is more or less the same as the provision of s. 60G of the Employment Ordinance which is as follows:
>
> > 60G. No labourer who has been in continuous service with an employer for less than three years shall be entitled to any retrenchment benefit on the termination of his service by the employer on the ground of redundancy or by reason of any reorganisation of the employer's profession, business trade or work.
> >
> > This section was repealed on 1 January 1977 but such repeal did not affect the case because the dispute took place in 1976. Even if the Court were to hold that these workers were the employees of the Restaurant instead of the Hotel, the matter of retrenchment is governed by a Collective Agreement between the Union and the Restaurant which is identical with the Union/Hotel Collective Agreement. Thus, they are also not eligible to retrenchment benefits from the Restaurant for similar reason – lack of three years' minimum service.

[58] An important consideration in distinguishing the present case from *Malaysia Baggage* (*supra*) and *Hotel Jaya Puri* (*supra*) is that the termination benefits due to redundancy in both these cases would be based on their employment contract or contract of service as well as any collective agreement between the respective union and the employer. The claimants in these cases were not covered by the EA 1955.

[59] In contrast, the quantum of compensation in respect of the respondents would "entitle" them to be covered under reg. 6 of the Employment (Termination and Lay-Off Benefits) Regulations 1980. Employees who fall within the purview of the EA 1955 (as amended) "shall be entitled" to termination benefits pursuant to the calculation under the said Regulations. The Act deals with termination benefits of employees who have been in continuous employment for 12 months or longer. See *Suhaila Talib v. Pearl Discovery Development Sdn Bhd* [2024] ILRU 1188 (Award No. 1188 of 2024).

[60] Learned counsel had forcefully submitted that the Labour Court was in error when it allowed the respondents lay-off benefits in accordance with reg. 5 of the Regulations. He said this in the context of the second and fourth respondents did not work as manual labourers, and that all the respondents were not daily paid.

[61] The relevant provision in respect of employees being laid-off can be found in reg. 5 of the Regulations entitled "lay-off". I had perused through the judgment of the learned Labour Officer, she did not deliberate or make a finding on reg. 5 at all. Read as a whole, her judgment was on termination benefits or "faedah penamatan" and not on lay-off or "pemberhentian kerja". For example, at para. 10 of her judgment only "kontrak perkhidmatan pekerja itu ditamatkan" was emphasised in bold and not the provision on lay-off.

[62] I find that the Labour Officer did not deliberate on reg. 5 nor did she award any award for "lay-off". Although the order did state "Faedah-Faedah Penamatan dan Pemberhentian Kerja", the mention of "Pemberhentian Kerja" was only incidental to it.

[63] I am of the view that the appellant was not in any way prejudiced by this. It is noted that the formula for the calculation for benefits on termination and lay-off is the same. In any event, the second and fourth respondents are also, like the first and third respondents entitled to termination benefits. I therefore find the appellant's contention that the respondents are not entitled to lay-off benefits does not merit consideration as the learned Labour Officer did not consider on the issue of "lay-off".

Conclusion

[64] In the upshot, I find that the Labour Officer was correct in awarding the respondents a total sum of RM110,027.07 (including the amount already paid to the respondents as "retrenchment compensation"). The appellant's appeal is therefore dismissed with cost.